

1 EDMUND G. BROWN JR., Attorney General  
of the State of California

2 ARTHUR D. TAGGART

Supervising Deputy Attorney General

3 ELENA L. ALMANZO, State Bar No. 131058

Deputy Attorney General

4 California Department of Justice

1300 I Street, Suite 125

5 P.O. Box 944255

Sacramento, CA 94244-2550

6 Telephone: (916) 322-5524

Facsimile: (916) 327-8643

7 Attorneys for Complainant

9 **BEFORE THE**  
10 **BOARD OF REGISTERED NURSING**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2008-233**

13 **MICHAEL HENRY HOUSER**

1645 Shirley Ct.

14 Modesto, California 95358

**A C C U S A T I O N**

15 Registered Nurse License No. 475944

Public Health Nurse Certification No. 55184

16 Nurse Practitioner Certification No. 9965

Nurse Practitioner Furnishing Certification No. 9965

17 Respondent.

19  
20 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

21 **PARTIES**

22 1. Complainant brings this Accusation solely in her official capacity as the  
23 Executive Officer of the Board of Registered Nursing ("Board"), Department of Consumer  
24 Affairs.

25 **Registered Nurse License**

26 2. On or about March 31, 1992, the Board issued Registered Nurse License  
27 Number 475944 to Michael Henry Houser ("Respondent"). The license will expire on  
28 August 31, 2009, unless renewed.

1                   **Public Health Nurse Certification**

2                   3.       On or about February 14, 1996, the Board issued Public Health Nurse  
3 Certification Number 55184 to Respondent. The certification will expire on August 31, 2009,  
4 unless renewed.

5                   **Nurse Practitioner Certification**

6                   4.       On or about July 16, 1998, the Board issued Nurse Practitioner  
7 Certification Number 9965 to Respondent. The certification will expire on August 31, 2009,  
8 unless renewed.

9                   **Nurse Practitioner Furnishing Certification**

10                  5.       On or about January 16, 2004, the Board issued Nurse Practitioner  
11 Furnishing Certification Number 9965 to Respondent. The certification will expire on  
12 August 31, 2009, unless renewed.

13                                   **STATUTORY PROVISIONS**

14                  6.       Business and Professions Code ("Code") section 2750 provides, in  
15 pertinent part, that the Board may discipline any licensee, including a licensee holding a  
16 temporary or an inactive license, for any reason provided in Article 3 (commencing with section  
17 2750) of the Nursing Practice Act.

18                  7.       Code section 2761 states, in part:

19                         "The board may take disciplinary action against a certified or licensed nurse or  
20 deny an application for a certificate or license for any of the following:

21                         (a) Unprofessional conduct, which includes, but is not limited to, the following:

22                                 (1) Incompetence, or gross negligence in carrying out usual certified or licensed  
23 nursing functions."

24                  8.       Code section 2725 states, in pertinent part:

25                         (a) In amending this section at the 1973-74 session, the Legislature recognizes  
26 that nursing is a dynamic field, the practice of which is continually evolving to  
27 include more sophisticated patient care activities. It is the intent of the Legislature  
28 in amending this section at the 1973-74 session to provide clear legal authority for  
functions and procedures that have common acceptance and usage. It is the  
legislative intent also to recognize the existence of overlapping functions between  
physicians and registered nurses and to permit additional sharing of functions

1 within organized health care systems that provide for collaboration between  
2 physicians and registered nurses. These organized health care systems include, but  
3 are not limited to, health facilities licensed pursuant to Chapter 2 (commencing  
with Section 1250) of Division 2 of the Health and Safety Code, clinics, home  
health agencies, physicians' offices, and public or community health services.

4 (b) The practice of nursing within the meaning of this chapter means those  
5 functions, including basic health care, that help people cope with difficulties in  
6 daily living that are associated with their actual or potential health or illness  
problems or the treatment thereof, and that require a substantial amount of  
scientific knowledge or technical skill, including all of the following:

7 . . .

8 (4) Observation of signs and symptoms of illness, reactions to treatment,  
9 general behavior, or general physical condition, and (A) determination of whether  
the signs, symptoms, reactions, behavior, or general appearance exhibit abnormal  
10 characteristics, and (B) implementation, based on observed abnormalities, of  
appropriate reporting, or referral, or standardized procedures, or changes in  
11 treatment regimen in accordance with standardized procedures, or the initiation of  
emergency procedures.

12 (c) "Standardized procedures," as used in this section, means either of the  
13 following:

14 (1) Policies and protocols developed by a health facility licensed pursuant to  
Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety  
15 Code through collaboration among administrators and health professionals  
including physicians and nurses.

16 (2) Policies and protocols developed through collaboration among  
17 administrators and health professionals, including physicians and nurses, by an  
organized health care system which is not a health facility licensed pursuant to  
18 Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety  
Code.

19 The policies and protocols shall be subject to any guidelines for standardized  
20 procedures that the Division of Licensing of the Medical Board of California and  
the Board of Registered Nursing may jointly promulgate. If promulgated, the  
21 guidelines shall be administered by the Board of Registered Nursing.

22 (d) Nothing in this section shall be construed to require approval of  
standardized procedures by the Division of Licensing of the Medical Board of  
23 California, or by the Board of Registered Nursing.

#### 24 REGULATORY PROVISIONS

25 9. California Code of Regulations, title 16, section 1442, states:

26 As used in Section 2761 of the code, 'gross negligence' includes  
an extreme departure from the standard of care which, under  
27 similar circumstances, would have ordinarily been exercised by a  
competent registered nurse. Such an extreme departure means the  
repeated failure to provide nursing care as required or failure to  
28 provide care or to exercise ordinary precaution in a single situation

1 which the nurse knew, or should have known, could have  
2 jeopardized the client's health or life.

3 10. California Code of Regulations, title 16, section 1443, states:

4 As used in Section 2761 of the code, 'incompetence' means the  
5 lack of possession of or the failure to exercise that degree of  
6 learning, skill, care and experience ordinarily possessed and  
7 exercised by a competent registered nurse as described in Section  
8 1443.5.

9 11. California Code of Regulations, title 16, section 1470, states:

10 The Board of Registered Nursing in conjunction with the Medical Board of  
11 California (see the regulations of the Medical Board of California, Article 9.5,  
12 Chapter 13, Title 16 of the California Code of Regulations) intends, by adopting  
13 the regulations contained in the article, to jointly promulgate guidelines for the  
14 development of standardized procedures to be used in organized health care  
15 systems which are subject to this rule. The purpose of these guidelines is:

16 (a) To protect consumers by providing evidence that the nurse meets all  
17 requirements to practice safely.

18 (b) To provide uniformity in development of standardized procedures.

19 12. California Code of Regulations, title 16, section 1471, states:

20 For purposes of this article:

21 (a) "Standardized procedure functions" means those functions specified in  
22 [Code] Section 2725(c) and (d) which are to be performed according to  
23 'standardized procedures';

24 (b) "Organized health care system" means a health facility which is not  
25 licensed pursuant to Chapter 2 (commencing with Section 1250), Division 2 of the  
26 Health and Safety Code and includes, but is not limited to, clinics, home health  
27 agencies, physicians' offices and public or community health services;

28 (c) "Standardized procedures" means policies and protocols formulated by  
organized health care systems for the performance of standardized procedure  
functions.

13. California Code of Regulations, title 16, section 1472, states:

An organized health care system must develop standardized procedures before  
permitting registered nurses to perform standardized procedure functions. A  
registered nurse may perform standardized procedure functions only under the  
conditions specified in a health care system's standardized procedures; and must  
provide the system with satisfactory evidence that the nurse meets its experience,  
training, and/or education requirements to perform such functions.

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1 14. California Code of Regulations, title 16, section 1474 states, in pertinent  
2 part:

3 Following are the standardized procedure guidelines jointly promulgated by the  
4 Medical Board of California and by the Board of Registered Nursing:

5 (a) Standardized procedures shall include a written description of the method  
used in developing and approving them and any revision thereof.

6 (b) Each standardized procedure shall:

7 (1) Be in writing, dated and signed by the organized health care system  
8 personnel authorized to approve it.

9 (2) Specify which standardized procedure functions registered nurses may  
perform and under what circumstances.

10 (3) State any specific requirements which are to be followed by registered  
11 nurses in performing particular standardized procedure functions.

12 (4) Specify any experience, training, and/or education requirements for  
performance of standardized procedure functions.

13 ...

14 (7) Specify the scope of supervision required for performance of standardized  
15 procedure functions, for example, immediate supervision by a physician.

16 (8) Set forth any specialized circumstances under which the registered nurse is  
17 to immediately communicate with a patient's physician concerning the patient's  
condition.

18 15. California Code of Regulations, title 16, section 1480 states, in pertinent  
19 part:

20 (a) "Nurse practitioner" means a registered nurse who possesses additional  
preparation and skills in physical diagnosis, psycho-social assessment, and  
21 management of health-illness needs in primary health care, and who has been  
prepared in a program conforms to board standards as specified in Section 1484.

## 22 COST RECOVERY

23 16. Code section 125.3 provides, in pertinent part, that the Board may request  
24 the administrative law judge to direct a licensee found to have committed a violation or  
25 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation  
26 and enforcement of the case.

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1                   5.       Ordering Michael Henry Houser to pay the Board of Registered Nursing  
2 the reasonable costs of the investigation and enforcement of this case, pursuant to Business and  
3 Professions Code section 125.3; and,

4                   6.       Taking such other and further action as deemed necessary and proper.

5 DATED: 1/30/08

6   
7 RUTH ANN TERRY, M.P.H., R.N.  
8 Executive Officer  
9 Board of Registered Nursing  
10 Department of Consumer Affairs  
11 State of California  
12 Complainant

13 SA2006100695

14 Accusation (kdg) 8/30/07; 1/17/08